

On May 18, 2006 appellant, then a 47-year-old police officer, filed a traumatic injury claim alleging that during training he was demonstrating a “take down move” and something

popped in the rib on his left side. He stopped work on May 18, 2006 and returned on June 5, 2006. The Office accepted the claim for a closed fracture of the left rib and paid appropriate compensation benefits.

On January 29 and February 17, 2007 appellant filed a claim for a schedule award.

In a March 26, 2007 report, Dr. Felix M. Kirven, a Board-certified orthopedic surgeon, diagnosed a fractured rib with residual pain and swelling and mild numbness at T-8.

In a letter dated April 2, 2007, the Office advised appellant that schedule awards were payable only when they caused a permanent impairment. It advised appellant that he should submit a report from his treating physician utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001). The Office also indicated that schedule awards were not payable for psychiatric disorders, back/neck, heart, brain or whole person impairments.

In a June 11, 2007 report, Dr. Kirven diagnosed upper thoracic rib pain with radiculopathy after rib fracture and opined that he had 10 percent impairment with regard to radicular pain from fracture of the right rib with swelling. He referred to Chapter 15 and Figure 5-15 of the A.M.A., *Guides* and opined that appellant reached maximum medical improvement on June 11, 2007.¹

On July 2, 2007 the Office denied appellant's claim for a schedule award. It found that the medical evidence of record did not support a permanent impairment to a scheduled member or function of the body.

In an August 15, 2007 report, Dr. Kirven repeated his impairment rating of 10 percent. He also submitted an August 13, 2007 report that noted appellant's status but did not address permanent impairment.

On September 6, 2007 appellant requested reconsideration.

In a November 9, 2007 report, Dr. Kirven repeated his previous diagnosis of rib fracture with residual thoracic rib pain and numbness. In a separate report also dated November 9, 2007, he noted that appellant had reviewed the job description for a police officer and advised that he was unable to perform the duties of a police officer. Dr. Kirven indicated that appellant was disabled and opined that his condition was permanent.

By decision dated November 15, 2007, the Office denied modification of its prior decision.

In letters dated December 4 and 16, 2007, appellant requested reconsideration.

In a December 17, 2007 report, Dr. Kirven diagnosed rib pain and chest pain.

¹ A.M.A., *Guides* 411-18, 395-400.

By decision dated March 19, 2008, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that his request was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions, and organs of the body.³ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.⁴ The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulation.⁶ Neither the Act nor implementing regulations specify the ribs as being members of the body for which a schedule award is payable.⁷

ANALYSIS -- ISSUE 1

The evidence of record is insufficient to establish that appellant is entitled to a schedule award in accordance with the fifth edition of the A.M.A., *Guides*.

The Office accepted appellant's claim for a closed fracture of the left rib. Appellant claimed a schedule award and submitted a June 11, 2007 report from his treating physician, Dr. Kirven, who opined that he had an impairment of 10 percent with regard to radicular pain from fracture of the right rib with swelling that he had reached maximum medical improvement on June 11, 2007. However, as noted above, the ribs are not members of the body for which a schedule award would be payable.⁸

The Board also notes that he referred to Chapter 15 and Figure 5-15 of the A.M.A., *Guides*.⁹ The Board notes that this chapter deals with impairments of the spine. As neither the Act, nor its regulations provide for the payment of a schedule award for the permanent loss of

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8107.

⁴ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

⁵ 20 C.F.R. § 10.404.

⁶ *Thomas J. Engelhart*, 50 ECAB 319 (1999).

⁷ *See Terry E. Mills*, 47 ECAB 309 (1996).

⁸ *Id.*

⁹ *See supra* note 1.

use of the back or the body as a whole, no claimant is entitled to such a schedule award.¹⁰ The Board also notes that section 8109(19) specifically excludes the back from the definition of organ.¹¹ However, a claimant may be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the neck, shoulders or spine.¹² In this case, appellant did not submit any medical evidence supporting an impairment to an upper or lower extremity causally related to the accepted rib fracture.

Appellant did not submit any other medical evidence to support that he was entitled to a schedule award for a specified member of the body under the Act. Accordingly, the Board finds that appellant has not established entitlement to a schedule award.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,¹³ the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office].”¹⁴

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹⁵

ANALYSIS -- ISSUE 2

The Office is required to reopen a case for merit review if an application for reconsideration demonstrates that the Office erroneously applied a specific point of law, puts forth relevant and pertinent new evidence or presents a new relevant legal argument. Appellant

¹⁰ See *supra* note 3; see also *Richard R. Lemay*, 56 ECAB 341 (2006).

¹¹ 5 U.S.C. § 8109(c).

¹² See *Richard R. Lemay*, *supra* note 10; see also *Thomas J. Engelhart*, *supra* note 6.

¹³ 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.606(b).

¹⁵ *Id.* at § 10.608(b).

did not argue that the Office erroneously applied a point of law or present a new relevant legal argument.

Appellant disagreed with the denial of his claim for a schedule award and submitted additional reports from his treating physician. They included reports dated November 9, 2007 from Dr. Kirven, who repeated his previous diagnosis of rib fracture with residual thoracic rib pain and numbness and opined that he was permanently disabled. Appellant also included a December 17, 2007 report, in which Dr. Kirven diagnosed rib pain and chest pain. However, these reports are repetitive of the previously submitted reports from Dr. Kirven. The submission of evidence which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.¹⁶

Appellant did not submit any relevant and pertinent new medical evidence to support his claim of a permanent impairment to a scheduled member causally related to his accepted condition. As he did not submit any relevant and pertinent new evidence, he is not entitled to merit review by the Office.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he was entitled to a schedule award. The Board also finds that the Office properly denied appellant's request for a review of the merits of his claim pursuant to 5 U.S.C. § 8128(a) of the Act.

¹⁶ See *Patricia G. Aiken*, 57 ECAB 441 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 19, 2008 and November 15, 2007 are affirmed.

Issued: January 7, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board